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UNITED STATES OF AMERICA
9

10 UNITED STATES DISTRICT COURT
11 FOR THE CENTRAL DISTRICT OF CALIFORNIA
12

13 UNITED STATES OF AMERICA,) CR No. 08-208(A) - PSG
)
14 Plaintiff,) <u>PLEA AGREEMENT FOR DEFENDANT</u>
) <u>CALVIN THOMAS</u>
15 v.)
)
16 CALVIN THOMAS,)
aka "Frog,")
17 JAMES RUSSELL HAMPTON, III,)
aka "Q-102," and)
18 ERIC ANDRE THOMAS)
aka "E-Rock,")
)
19 Defendants.)

20
21 1. This constitutes the plea agreement between CALVIN
22 THOMAS ("defendant") and the United States Attorney's Office for
23 the Central District of California ("the USAO") in the above-
24 captioned case. This agreement is limited to the USAO and cannot
25 bind any other federal, state or local prosecuting,
26 administrative or regulatory authorities.

27 PLEA

28 2. Defendant agrees to plead guilty to count two

1 of the First Superseding Indictment in United States v. Calvin
2 Thomas, et. al, CR No. 08-208(A) -PSG.

3 NATURE OF THE OFFENSE

4 3. In order for defendant to be guilty of count two,
5 which charges a violation of Title 21, United States Code,
6 Sections 856, the following must be true: (1) defendant knowingly
7 opened, leased, rented, used, or maintained a place (in this
8 case, the residence and property located at 235 East 102nd
9 Street, Los Angeles, California); and (2) defendant did so for
10 the purpose of manufacturing, distributing or using a controlled
11 substance (in this case marijuana). Defendant admits that
12 defendant is, in fact, guilty of this offense as described in
13 count two of the First Superseding Indictment.

14 PENALTIES

15 4. The statutory maximum sentence that the Court can impose
16 for a violation of Title 21, United States Code, Section 856 is:
17 20 years imprisonment; a three-year period of supervised release;
18 a fine of \$500,000; and a mandatory special assessment of \$100.

19 5. Under 21 U.S.C. § 862a, defendant may not be eligible
20 for assistance under state programs funded under the Social
21 Security Act or Federal Food Stamp Act and will not be eligible
22 for federal food stamp program benefits; furthermore, any such
23 benefits or assistance received by defendant's family members
24 will be reduced to reflect defendant's ineligibility.

25 6. Supervised release is a period of time following
26 imprisonment during which defendant will be subject to various
27 restrictions and requirements. Defendant understands that if
28

1 defendant violates one or more of the conditions of any
2 supervised release imposed, defendant may be returned to prison
3 for all or part of the term of supervised release, which could
4 result in defendant serving a total term of imprisonment greater
5 than the statutory maximum stated above.

6 7. Defendant also understands that, by pleading guilty,
7 defendant may be giving up valuable government benefits and
8 valuable civic rights, such as the right to vote, the right to
9 possess a firearm, the right to hold office, and the right to
10 serve on a jury.

11 8. Defendant further understands that the conviction in
12 this case may subject defendant to various collateral
13 consequences, including but not limited to deportation,
14 revocation of probation, parole, or supervised release in another
15 case, and suspension or revocation of a professional license.
16 Defendant understands that unanticipated collateral consequences
17 will not serve as grounds to withdraw defendant's guilty plea.

18 FACTUAL BASIS

19 9. Defendant and the USAO agree and stipulate to the
20 statement of facts provided below. This statement of facts is
21 sufficient to support a plea of guilty to the charge described in
22 this agreement and to establish the sentencing guideline factors
23 set forth in paragraph 12 below. It is not meant to be a
24 complete recitation of all facts relevant to the underlying
25 criminal conduct or all facts known to either party that relate
26 to that conduct.

27 Beginning on an unknown date and continuing until in or
28 about April 2008, defendant Calvin Thomas knowingly maintained

1 and used a residence, located at 235 East 102nd Street, Los
2 Angeles, California for the unlawful purpose of distributing and
3 using marijuana. Specifically, on or about January 30, 2008,
4 defendant maintained and used the residence to store with intent
5 to distribute approximately 475.8 grams of marijuana.

6 WAIVER OF CONSTITUTIONAL RIGHTS

7 10. By pleading guilty, defendant gives up the following
8 rights:

9 a) The right to persist in a plea of not guilty.
10 b) The right to a speedy and public trial by jury.
11 c) The right to the assistance of legal counsel at
12 trial, including the right to have the Court appoint counsel for
13 defendant for the purpose of representation at trial. (In this
14 regard, defendant understands that, despite his plea of guilty,
15 he retains the right to be represented by counsel -- and, if
16 necessary, to have the court appoint counsel if defendant cannot
17 afford counsel -- at every other stage of the proceeding.)

18 d) The right to be presumed innocent and to have the
19 burden of proof placed on the government to prove defendant
20 guilty beyond a reasonable doubt.

21 e) The right to confront and cross-examine witnesses
22 against defendant.

23 f) The right, if defendant wished, to testify on
24 defendant's own behalf and present evidence in opposition to the
25 charges, including the right to call witnesses and to subpoena
26 those witnesses to testify.

27 g) The right not to be compelled to testify, and, if
28 defendant chose not to testify or present evidence, to have that

1 choice not be used against defendant.

2 By pleading guilty, defendant also gives up any and all
3 rights to pursue any affirmative defenses, Fourth Amendment or
4 Fifth Amendment claims, and other pretrial motions that have been
5 filed or could be filed.

6 SENTENCING FACTORS

7 11. Defendant understands that the Court is required to
8 consider the factors set forth in 18 U.S.C. § 3553(a)(1)-(7),
9 including the kinds of sentence and sentencing range established
10 under the United States Sentencing Guidelines ("U.S.S.G." or
11 "Sentencing Guidelines"), in determining defendant's sentence.
12 Defendant further understands that the Sentencing Guidelines are
13 advisory only, and that after considering the Sentencing
14 Guidelines and the other § 3553(a) factors, the Court may be free
15 to exercise its discretion to impose any reasonable sentence up
16 to the maximum set by statute for the crime of conviction.

17 12. Defendant and the USAO agree and stipulate to the
18 following applicable Sentencing Guidelines factors:

19 Base Offense Level : 8 [U.S.S.G. § 2D1.1]

20 Defendant and the USAO reserve the right to argue that additional
21 specific offense characteristics, adjustments, and departures
22 under the Sentencing Guidelines are appropriate. Defendant also
23 understands that defendant's base offense level could be
24 increased if defendant is a career offender under U.S.S.G. §§
25 4B1.1 and 4B1.2. In the event that defendant's offense level is
26 so altered, the parties are not bound by the base offense level
27 stipulated to above.

28 13. There is no agreement as to defendant's criminal

1 history or criminal history category.

2 14. Defendant and the USAO, pursuant to the factors set
3 forth in 18 U.S.C. § 3553(a)(1), (a)(2), (a)(3), (a)(6), and
4 (a)(7), further reserve the right to argue for a sentence outside
5 the sentencing range established by the Sentencing Guidelines.

6 15. The stipulations in this agreement do not bind either
7 the United States Probation Office or the Court. Both defendant
8 and the USAO are free to: (a) supplement the facts by supplying
9 relevant information to the United States Probation Office and
10 the Court, (b) correct any and all factual misstatements relating
11 to the calculation of the sentence, and (c) argue on appeal and
12 collateral review that the Court's Sentencing Guidelines
13 calculations are not error, although each party agrees to
14 maintain its view that the calculations in paragraph 12 are
15 consistent with the facts of this case.

16 DEFENDANT'S OBLIGATIONS

17 16. Defendant agrees that he will:

18 a) Plead guilty as set forth in this agreement.

19 b) Not knowingly and willfully fail to abide by all
20 sentencing stipulations contained in this agreement.

21 c) Not knowingly and willfully fail to: (i) appear for
22 all court appearances, (ii) surrender as ordered for service of
23 sentence, (iii) obey all conditions of any bond, and (iv) obey
24 any other ongoing court order in this matter.

25 d) Not commit any crime; however, offenses which would
26 be excluded for sentencing purposes under U.S.S.G. § 4A1.2(c) are
27 not within the scope of this agreement.

28 e) Not knowingly and willfully fail to be truthful at

1 all times with Pretrial Services, the U.S. Probation Office, and
2 the Court.

3 f) Pay the applicable special assessment at or before
4 the time of sentencing unless defendant lacks the ability to pay
5 and submits a completed financial statement (form OBD-500) to the
6 USAO prior to sentencing.

7 THE USAO'S OBLIGATIONS

8 17. If defendant complies fully with all defendant's
9 obligations under this agreement, the USAO agrees:

10 a) To abide by all sentencing stipulations contained in
11 this agreement.

12 b) At the time of sentencing to move to dismiss the
13 remaining counts of the First Superseding Indictment as against
14 defendant. Defendant agrees, however, that at the time of
15 sentencing the Court may consider the dismissed counts in
16 determining the applicable Sentencing Guidelines range, where the
17 sentence should fall within that range, the propriety and extent
18 of any departure from that range, and the determination of the
19 sentence to be imposed after consideration of the Sentencing
20 Guidelines and all other relevant factors under 18 U.S.C. §
21 3553(a).

22 c) At the time of sentencing, provided that defendant
23 demonstrates an acceptance of responsibility for the offense up
24 to and including the time of sentencing, to recommend a two-level
25 reduction in the applicable sentencing guideline offense level,
26 pursuant to U.S.S.G. § 3E1.1, and to recommend and, if necessary,
27 move for an additional one-level reduction if available under
28 that section.

1 d) To recommend that defendant be sentenced to a term
2 of imprisonment at the low end of the applicable Sentencing
3 Guidelines imprisonment range provided that the total offense
4 level as calculated by the Court is 6 or higher and provided that
5 the Court does not depart downward in offense level or criminal
6 history category. For purposes of this agreement, the low end of
7 the Sentencing Guidelines imprisonment range is that defined by
8 the Sentencing Table in U.S.S.G. Chapter 5, Part A.

9 BREACH OF AGREEMENT

10 18. If defendant, at any time after the execution of this
11 agreement, knowingly violates or fails to perform any of
12 defendant's agreements or obligations under this agreement ("a
13 breach"), the USAO may declare this agreement breached. If the
14 USAO declares this agreement breached at any time following its
15 execution, and the Court finds such a breach to have occurred,
16 then: (a) if defendant has previously entered a guilty plea,
17 defendant will not be able to withdraw the guilty plea, and (b)
18 the USAO will be relieved of all of its obligations under this
19 agreement.

20 19. Following the Court's finding of a knowing and willful
21 breach of this agreement by defendant, should the USAO elect to
22 pursue any charge that was either dismissed or not filed as a
23 result of this agreement, then:

24 a) Defendant agrees that any applicable statute of
25 limitations is tolled between the date of defendant's signing of
26 this agreement and the commencement of any such prosecution or
27 action.

28 b) Defendant gives up all defenses based on the statute

1 of limitations, any claim of pre-indictment delay, or any speedy
2 trial claim with respect to any such prosecution or action,
3 except to the extent that such defenses existed as of the date of
4 defendant's signing this agreement.

5 c) Defendant agrees that: (i) any statements made by
6 defendant, under oath, at the guilty plea hearing (if such a
7 hearing occurred prior to the breach); (ii) the stipulated
8 factual basis statement in this agreement; and (iii) any evidence
9 derived from such statements, are admissible against defendant in
10 any such prosecution of defendant, and defendant shall assert no
11 claim under the United States Constitution, any statute, Rule 410
12 of the Federal Rules of Evidence, Rule 11(f) of the Federal Rules
13 of Criminal Procedure, or any other federal rule, that the
14 statements or any evidence derived from any statements should be
15 suppressed or are inadmissible.

16 LIMITED MUTUAL WAIVER OF APPEAL

17 20. Defendant gives up the right to appeal any sentence
18 imposed by the Court, and the manner in which the sentence is
19 determined, provided that (a) the sentence is within the
20 statutory maximum specified above and is constitutional, and (b)
21 the Court imposes a sentence within or below the range
22 corresponding to a total offense level of 6, and the applicable
23 criminal history category as determined by the Court.

24 Notwithstanding the foregoing, defendant retains any ability
25 defendant has to appeal the conditions of supervised release
26 imposed by the Court, with the exception of the following:
27 conditions set forth in General Orders 318, 01-05, and/or 05-02
28 of this Court; the drug testing conditions mandated by 18 U.S.C.

1 §§ 3563(a)(5) and 3583(d); and the alcohol and drug use
2 conditions authorized by 18 U.S.C. § 3563(b)(7).

3 21. The USAO gives up its right to appeal the sentence,
4 provided that (a) the sentence is within the statutory maximum
5 specified above and is constitutional, and (b) the Court imposes
6 a sentence within or above the range corresponding to a total
7 offense level of 6, and the applicable criminal history category
8 as determined by the Court.

9 COURT NOT A PARTY

10 22. The Court is not a party to this agreement and need not
11 accept any of the USAO's sentencing recommendations or the
12 parties' stipulations. Even if the Court ignores any sentencing
13 recommendation, finds facts or reaches conclusions different from
14 any stipulation, and/or imposes any sentence up to the maximum
15 established by statute, defendant cannot, for that reason,
16 withdraw defendant's guilty plea, and defendant will remain bound
17 to fulfill all defendant's obligations under this agreement. No
18 one -- not the prosecutor, defendant's attorney, or the Court --
19 can make a binding prediction or promise regarding the sentence
20 defendant will receive, except that it will be within the
21 statutory maximum.

22 NO ADDITIONAL AGREEMENTS

23 23. Except as set forth herein, there are no promises,
24 understandings or agreements between the USAO and defendant or
25 defendant's counsel. Nor may any additional agreement,
26 understanding or condition be entered into unless in a writing
27 signed by all parties or on the record in court.

1 PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING


2 24. The parties agree and stipulate that this Agreement
3 will be considered part of the record of defendant's guilty plea
4 hearing as if the entire Agreement had been read into the record
5 of the proceeding.

6 This agreement is effective upon signature by defendant and
7 an Assistant United States Attorney. If a fully executed copy of
8 this agreement is not returned to Assistant United States
9 Attorney Lawrence S. Middleton by **12:00 noon on Friday, March 5,**
10 **2009**, it will be automatically withdrawn and thereafter of no
11 legal effect or force, unless renewed by the U.S. Attorney's
12 Office.

13 AGREED AND ACCEPTED

14 UNITED STATES ATTORNEY'S OFFICE
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA

16 THOMAS P. O'BRIEN
17 United States Attorney

18 
19 LAWRENCE S. MIDDLETON
Assistant United States Attorney

3-5-09
Date

20 I have read this agreement and carefully discussed every
21 part of it with my attorney. I understand the terms of this
22 agreement, and I voluntarily agree to those terms. My attorney
23 has advised me of my rights, of possible defenses, of the
24 sentencing factors set forth in 18 U.S.C. § 3553(a), of the
25 relevant Sentencing Guidelines provisions, and of the
26 consequences of entering into this agreement. No promises or
27 inducements have been given to me other than those contained in
28 this agreement. No one has threatened or forced me in any way to

1 enter into this agreement. Finally, I am satisfied with the
2 representation of my attorney in this matter.

3
4 Calvin Thomas

5 CALVIN THOMAS
6 Defendant

3-4-09
Date

7 I am Calvin Thomas' attorney. I have carefully discussed
8 every part of this agreement with my client. Further, I have
9 fully advised my client of his rights, of possible defenses, of
10 the sentencing factors set forth in 18 U.S.C. § 3553(a), of the
11 relevant Sentencing Guidelines provisions, and of the
12 consequences of entering into this agreement. To my knowledge,
13 my client's decision to enter into this agreement is an informed
14 and voluntary one.

15 Robert A. Nadler

16 ROBERT A. NADLER, ESQUIRE
17 Counsel for Defendant
18 Calvin Thomas

3/4/09
Date